

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ROBERT SHAWN LYNCH,

Plaintiff,

V.

DEPARTMENT OF CORRECTIONS,

Defendant.

No. C13-5289 RJB/KLS

ORDER TO AMEND OR SHOW CAUSE

Before the Court for review is Plaintiff's proposed civil rights complaint. ECF No. 4.

Plaintiff has been granted leave to proceed *in forma pauperis*. ECF No. 3. The Court will not direct service of Plaintiff's complaint at this time because it is deficient. However, Plaintiff will be given an opportunity to file an amended complaint.

DISCUSSION

Under the Prison Litigation Reform Act of 1995, the Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915A(b)(1), (2) and 1915(e)(2); See *Barren v. Harrington*, 152 F.3d 1193 (9th Cir. 1998).

A complaint is legally frivolous when it lacks an arguable basis in law or fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Franklin v. Murphy*, 745 F.2d 1221, 1227-28 (9th Cir.

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1 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
2 indisputably meritless legal theory or where the factual contentions are clearly baseless. *Neitzke*,
3 490 U.S. at 327. A complaint or portion thereof, will be dismissed for failure to state a claim
4 upon which relief may be granted if it appears the “[f]actual allegations . . . [fail to] raise a right
5 to relief above the speculative level, on the assumption that all the allegations in the complaint
6 are true.” *See Bell Atlantic, Corp. v. Twombly*, 127 S.Ct. 1955, 1965 (2007) (citations omitted).
7 In other words, failure to present enough facts to state a claim for relief that is plausible on the
8 face of the complaint will subject that complaint to dismissal. *Id.* at 1974.

10 Although complaints are to be liberally construed in a plaintiff’s favor, conclusory
11 allegations of the law, unsupported conclusions, and unwarranted inferences need not be
12 accepted as true. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). Neither can the court supply
13 essential facts that an inmate has failed to plead. *Pena*, 976 F.2d at 471 (quoting *Ivey v. Board of*
14 *Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982)).

16 To state a claim under 42 U.S.C. § 1983, a complaint must allege: (i) the conduct
17 complained of was committed by a person acting under color of state law and (ii) the conduct
18 deprived a person of a right, privilege, or immunity secured by the Constitution or laws of the
19 United States. *Parratt v. Taylor*, 451 U.S. 527, 535, 101 S.Ct. 1908, 687 L.Ed.2d 420 (1981),
20 *overruled on other grounds*, *Daniels v. Williams*, 474 U.S. 327 (1986). Section 1983 is the
21 appropriate avenue to remedy an alleged wrong only if both of these elements are present.
22 *Haygood v. Younger*, 769 F.2d 1350, 1354 (9th Cir. 1985). In addition, in order to obtain relief
23 against a defendant under 42 U.S.C. § 1983, a plaintiff must prove that a particular defendant has
24 caused or personally participated in causing the deprivation of a particular protected
25 constitutional right. *Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981). To be liable for

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1 “causing” the deprivation of a constitutional right, the particular defendant must commit an
2 affirmative act, or omit to perform an act, that he or she is legally required to do, and which
3 causes the plaintiff’s deprivation. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).

4 Plaintiff purports to sue the Department of Corrections (DOC) for negligence in the
5 treatment of an injury to his right hand and finger. He seeks \$297,000.00 and the placement of
6 caution signs at gates. ECF No. 1-1, p. 4. Based on these allegations, Plaintiff has failed to state
7 a viable claim under 42 U.S.C. § 1983.

8 Plaintiff’s complaint is defective because he has named only the DOC as a defendant.
9 However, “neither a State nor its officials acting in their official capacity are ‘persons’ under §
10 1983.” *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71, 109 S.Ct. 2304, 105 L.Ed.2d 45
11 (1989). Likewise, “arms of the State” such as the Department of Corrections are not “persons”
12 amenable to suit under 42 U.S.C. § 1983. *Id.*, at 70. Accordingly, claims against the DOC
13 would be subject to dismissal.

14 Plaintiff’s complaint is also defective because he claims only negligence. A claim of
15 negligence is not a constitutional violation. To establish a constitutional violation under the
16 Eighth Amendment due to inadequate or denial of medical care, a plaintiff must show “deliberate
17 indifference” by prison officials to a “serious medical need.” *Estelle v. Gamble*, 429 U.S. 97,
18 104, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976). Deliberate indifference to a prisoner’s medical needs
19 is defined by the Court as the “unnecessary and wanton infliction of pain.” *Id.* Indifference
20 proscribed by the Eighth Amendment may be manifested by a prison doctor’s response to the
21 prisoner’s need, by the intentional denying or delaying access to medical care, or the intentional
22 interference with treatment once prescribed. *Id.* “Medical malpractice does not become a
23 constitutional violation merely because the victim is a prisoner.” *Estelle*, 429 U.S. at 106.

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1 Plaintiff will be given an opportunity to file an amended complaint to cure, if possible,
2 the deficiencies noted above. In the amended complaint, Plaintiff must set forth facts describing:
3 (1) the constitutional right Plaintiff believes was violated; (2) name of the person or persons who
4 violated the right; (3) exactly what the individual or individuals did or failed to do; (4) how the
5 action or inaction of that person or persons is connected to the violation of Plaintiff's
6 constitutional rights; and (5) what specific injury Plaintiff suffered because of that conduct. See
7 *Rizzo v. Goode*, 423 U.S. 362, 371–72, 377, 96 S.Ct. 598, 46 L.Ed.2d 561 (1976). Conclusory
8 allegations that a defendant or a group of defendants have violated a constitutional right are not
9 acceptable and will be dismissed.

10
11 If the person named as a defendant is a supervisory official, Plaintiff must either state that
12 the defendant personally participated in the constitutional deprivation (and tell the Court the five
13 things listed above), or Plaintiff must state, if he can do so in good faith, that the defendant was
14 aware of the similar widespread abuses, but with deliberate indifference to Plaintiff's
15 constitutional rights, failed to take action to prevent further harm to Plaintiff, and also state facts
16 to support this claim. See *Monell v. New York City Department of Social Services*, 436 U.S. 658,
17 691, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978).

18
19 Plaintiff shall present his complaint on the form provided by the Court. The amended
20 complaint must be **legibly rewritten or retyped in its entirety**, it should be an original and not a
21 copy, it should contain the same case number, and it may not incorporate any part of the original
22 complaint by reference. An amended complaint operates as a complete substitute for (rather than
23 a mere supplement to) the present complaint. Thus, once Plaintiff files an amended complaint,
24 the original complaint will no longer serve any function in this case and reference to the original
25 complaint is unacceptable.

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1 Plaintiff should complete all sections of the court's form. Plaintiff may attach
2 continuation pages as needed but may not attach a separate document that purports to be his
3 amended complaint. The Court will screen the amended complaint to determine whether it
4 contains factual allegations linking each defendant to the alleged violations of Plaintiff's rights.
5 The Court will not authorize service of the amended complaint on any defendant who is not
6 specifically linked to the violation of Plaintiff's rights.
7

8 If Plaintiff decides to file an amended civil rights complaint in this action, he is cautioned
9 that if the amended complaint is not timely filed or if he fails to adequately address the issues
10 raised herein on or before **May 31, 2013**, the Court will recommend dismissal of this action as
11 frivolous pursuant to 28 U.S.C. § 1915 and the dismissal will count as a "strike" under 28 U.S.C.
12 § 1915(g). Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner who brings three
13 or more civil actions or appeals which are dismissed on grounds they are legally frivolous,
14 malicious, or fail to state a claim, will be precluded from bringing any other civil action or
15 appeal in forma pauperis "unless the prisoner is under imminent danger of serious physical
16 injury." 28 U.S.C. § 1915(g).

18 **The Clerk is directed to send Plaintiff the appropriate forms for filing a 42 U.S.C.
19 1983 civil rights complaint and for service. The Clerk is further directed to send a copy of
20 this Order and a copy of the General Order to Plaintiff.**

22 **DATED** this 24th day of April, 2013.

23 
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25 Karen L. Strombom
26 United States Magistrate Judge